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ABSTRACT

Common problems and questions raised in implementation of P.L. 94-142 are dealt with in this pamphlet. The purpose of this publication is to help teachers and other school employees use the law to protect the interests of all children and their own rights as professionals. The following areas of concern are discussed in question-answer format: (1) basic requirements; (2) Individualized Education Programs (IEPs); (3) less restrictive environment placements; (4) due process; (5) state and local regulations; and (6) noncompliance. (JD)

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THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT (P.L. 94-142): PRESERVING BOTH CHILDREN'S AND TEACHERS' RIGHTS

BY MARILYN RAUTH

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THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT (P.L. 94-142): PRESERVING BOTH CHILDREN'S AND TEACHERS' RIGHTS

INTRODUCTION

In November 1975, Congress passed the Education for All Handicapped Children Act, also known as Public Law 94-142. This law provides basic grants to states to assure all handicapped children the right to a free appropriate public education in the most appropriate least restrictive environment. For each handicapped child, an individualized education program (IEP) must be developed which lists: 1) the child's present level of educational performance, 2) annual goals and short-term instructional objectives, 3) special education and related services to be provided, 4) the extent of participation in regular education programs, 5) projected dates for initiation and expected duration of special services, and 6) objective criteria and evaluation procedures to determine whether instructional objectives are being met. As of fall 1978, all states but New Mexico have applied for funds under P.L. 94-142 and therefore must meet its provisions.

This pamphlet deals with some of the common problems and questions raised in implementation of P.L. 94-142. Hopefully, it will help teachers and other school employees use the law to protect the interests of all children and their own rights as professionals. Teachers enjoying successful implementation of the law, meaning handicapped children are receiving quality education and teachers are finding their ability to facilitate learning unimpaired, are encouraged to share this information with us. Those of you experiencing problems in implementation should realize you are not alone. Concerns addressed in this booklet are the result of our discussions with teachers and other school personnel throughout the country. These concerns do not reflect isolated instances. Rather, they are based on general problems which seem to differ little from one school system to another.

Occasionally this booklet assumes some knowledge of P.L. 94-142 on the part of the reader. Those unfamiliar with requirements and terms of the law are first directed to another AFT booklet, "A Guide to Understanding the Education for All Handicapped Children Act."

You will note reference both to P.L. 94-142, the law, and its *regulations*. After a bill is passed, the responsible federal agency, in this case the Bureau of Education for the Handicapped within the U.S. Office of Education, develops regulations for the law. The law itself may contain both general and specific provisions Regulations attempt to interpret these, setting specific procedures which must be followed by all agencies responsible for implementation.

BASIC REQUIREMENTS

Q. By when must my school system provide a free appropriate education to handicapped children in our jurisdiction?
A. P.L. 94-142 took effect October 1, 1977. At that time school systems were to meet the law's provisions with respect to identifying handicapped children, writing IEPs and enrolling handicapped children, but they could legally provide less than a free appropriate public education. As of September 1, 1978, a free appropriate public education must be provided to all handicapped children age 3 through 18 and as of September 1, 1980 for all handicapped children age 3 through 21.

Q. Must the school system provide an education for handicapped children age 3 through 5 and 18 through 21 if it is not provided for non-handicapped children?
A. The schools are not necessarily legally bound to do so. Education of these age group populations is not mandatory if inconsistent with state law or practice or any court order. The general rule is that whenever education is provided for non-handicapped children of these ages, it must also be available to handicapped children. Special incentive grants under P.L. 94-142 encourage school systems to provide special education to handicapped children ages three, four and five.

INDIVIDUALIZED EDUCATION PROGRAMS (IEPs)

Q. Does P.L. 94-142 require that an individualized education program (IEP) be developed for all handicapped children within public education?
A. No, IEPs must be developed only for handicapped children requiring special education. Included in this group of children are only those falling under the definitions of handicapping conditions given in P.L. 94-142. Some disabilities in no way affect a child's ability to function in regular classrooms and extracurricular activities.

Q. By when each year must an individualized education program (IEP) be developed for each handicapped child requiring special education?
A. An IEP must be completed for each of these handicapped children by the beginning of the school year. The IEP must be in effect before special education and related services are provided and then must be reviewed annually by the planning team.

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Q. Must the required annual review of the IEP take place on the anniversary date of the original planning meeting?
A. No, although this is one possibility. The timing of these meetings is left to the discretion of the school system, but they must be scheduled sometime within a year of the last IEP meeting. Because some school systems are requiring that all IEP reviews be done in a very short period of time, such as two weeks, locals may consider negotiating a clause in their contract stating IEP review meetings shall be held any time during the school year as long as they take place within a year of the last meeting.

Q. How soon must an IEP be developed for handicapped children who are found to require special education after the beginning of the school year?
A. Each of these children must have an IEP within 30 calendar days of determination that special education is required.

Q. Can teachers be required to attend IEP planning meetings outside regular school hours?
A. This possibility does exist. IEP planning meetings must be held at times and locations mutually convenient to parents and educators. They, therefore, in some instances could be held in locations other than the school and outside regular school hours. Because this could result in substantial extra duty for teachers, collective bargaining contracts should stipulate that such meetings take place on school grounds during the regular school day, whenever possible. The school system should be responsible for providing a substitute teacher when meetings are held during class time. Extra compensation should be provided when meetings are scheduled outside regular school hours and transportation costs reimbursed if travel is required. The fact that IEP planning meetings could conceivably be held during the summer gives added importance to such a clause.

Q. Are teachers responsible for contacting parents to set up IEP planning meetings?
A. The school system is responsible for seeing that parents are notified of these meetings in their native language or other means of communication. Such notification must be given within a reasonable time prior to when the meeting shall take place. Schools may designate this responsibility to anyone, and in many cases it has been assigned to teachers. Here again, teachers' only protection against an increased workload is through their contract. A clause should be added designating these parental contacts as an administrative responsibility, leaving teachers time to teach.

Q. How can teachers in non-bargaining situations protect themselves from work overloads resulting from provisions of P.L. 94-142?

A. There are no simple answers to this question when teachers do not have the legal protections of a contract. The union should take its case to the school board and the public, presenting documented evidence of how certain assignments erode teaching time or teacher morale and therefore the quality of education.

Q. If the child's teacher disagrees with the goals or with other aspects of the IEP, does the teacher have any means of appeal?

A. P.L. 94-142 requires due process with local and state level hearings for parents or the public agency (e.g., the local school system) only. A teacher does not have direct access to the due process mechanism.

Q. If we as teachers have no due process rights under P.L. 94-142, how can we protect the rights of handicapped children when we feel the IEP is inappropriate or when circumstances make it impossible to implement the IEP?

A. The law itself offers no solution to this problem if support cannot be obtained from either the school system or the parent. If the matter cannot be resolved through regular school system channels, we advise teachers to handle this situation by attaching a written statement to the IEP in the child's file. This statement, signed by the teacher, should say the goals of the IEP cannot be met for the following reason(s). Reasons should be listed—for example, the teacher's lack of appropriate training, the inaccessibility of appropriate support services or personnel, class size which prevents the child from receiving adequate attention, or the lack of equipment or physical facilities necessary to insure the child's safety or to assure the child's needs are met in the classroom. Before taking this action, the teacher should consult with an officer of his or her local union or the AFT building representative, so they are aware that a problem exists. Although the situation can be explained, teachers should not use children's names as this would violate a child's right to confidentiality of personally identifiable information.

Q. What good would such a statement do if it simply sits in the files and does not result in corrective action?

A. Hopefully the statement would prod the school system or the parents into reviewing the appropriateness of the education being received by the child and resolving the problem. If, however, results are not forthcoming, the teacher should ask the union to inform the monitoring agency of the state education department and request an investigation of the situation. If the union can show a pattern of abuse of the law throughout the school system, rather than citing a single incident, requests for an investigation by the state will be given more attention. The state is responsible for seeing that each handicapped child is receiving an appropriate public education.

Q. In the event even these efforts fail, is there any recourse left us?

A. Yes, if violations of the law are serious enough, the local union may be asked to consult the AFT national office on whether assistance in getting a federal investigation is warranted.

Q. How detailed is the IEP to be?

A. This question is not addressed in either the law or its regulations. Representatives of the U.S. Bureau of Education for the Handicapped have repeatedly stressed, however, that the IEP is not meant to be a long, complicated form. Components required in the IEP should be stated as concisely as possible. The IEP is required to list only: 1) the child's present level of educational performance, 2) annual goals and short-term instructional objectives, 3) special education and related services to be provided, 4) the extent of participation in regular education programs, 5) projected dates for initiation and expected duration of special services, and 6) objective criteria and evaluation procedures to determine whether instructional objectives are being met. If teachers in your school system are required to use an excessive number of forms or forms of unreasonable length to meet the IEP requirement, contact your local union and the AFT national office. Information can be provided which may convince your school system it is unnecessarily taking time from teachers in completing these forms that might be used more productively.

Q. Should every subject area dealt with in a self-contained special education classroom be addressed in the IEP?

A. We recommend against this, especially in terms of short-term instructional objectives. It simply creates an unwieldy IEP. Annual goals should be stated in broad terms and instructional objectives should relate to the general annual goals. Goals should be based on skills rather than subject matter.

Q. How specific should annual goals listed in the IEP be?

A. Annual goals should set a developmental level which the teacher will help the student try to achieve. They should be general enough, however, that minor changes found necessary in the child's program do not require that the IEP planning group be constantly reconvened.

Q. Will the teacher be held accountable if a child does not achieve the goals stated in the IEP?

A. No. Federal regulations for the law state explicitly that the IEP is not a guarantee by any public agency or teacher that a child will progress at a specified rate. The agency and teacher are responsible, however, for seeing that good faith efforts are made to meet goals and objectives established in the IEP. Parents may ask for revisions of their children's programs or invoke due process procedures any time they feel such efforts are not being made.

Q. What should be done if administrators, despite the law's intent, attempt to harass teachers or threaten their employment when handicapped children do not obtain goals set forth in the IEP?

A. Teachers in these circumstances should file a grievance through their local federation immediately. Such harassment clearly is not allowed under the law and could be ended quickly.

LESS RESTRICTIVE ENVIRONMENT PLACEMENTS

Q. What is meant by "less restrictive environment placements" in P.L. 94-142?

A. Under P.L. 94-142, each public agency must insure that handicapped children are educated with non-handicapped children to the maximum extent possible and that placement of a handicapped child outside the regular classroom occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Q. Does this mean most handicapped children will now be placed in the regular classroom?

A. Placement must be based on each individual child's needs. If a handicapped child can learn and function effectively in a regular classroom, such placement is required. The law recognizes, however, that not all children will benefit from the regular classroom environment. P.L. 94-142 requires that a continuum of alternative placements be available, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. Federal regulations, in fact, require that "in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs."

Q. What is the difference between less restrictive environment placements and mainstreaming?

A. Sometimes the two are used synonymously; other times mainstreaming is used to mean placement of handicapped students in regular classrooms only. Because in some cases school systems rushed to "mainstream" as many handicapped children as possible into regular classrooms, thereby hoping to save a considerable amount of money normally spent on special education, mainstreaming developed a very negative connotation. This type of placement obviously was not based on individual needs. Some advocacy groups, such as the Council for Exceptional Children, then claimed mainstreaming was a misnomer. In federal legislation, "less restrictive environment placements" finally replaced mainstreaming as an attempt to overcome its tarnished image and better convey the concept of a continuum of alternative placements.

Q. Are there any children who should never be placed in the regular classroom?

A. The information we currently have indicates that in no case should a severely and profoundly handicapped child be placed in a regular classroom. Also, only certified special education teachers should be assigned to work in any area with severely and profoundly impaired children.

Q. What should be done if the school system is placing handicapped children on the basis of programs and services available rather than on those that are actually needed?

A. This is clearly against the law. This should be protested through regular channels and then appealed to the state or federal level if corrective action is not taken. The school system through this practice is leaving itself open to law suits which ultimately will mean even less money available for its entire education program.

Q. Is there any way regular education teachers who feel they are not receiving appropriate assistance in working with handicapped children in these classes can use P.L. 94-142 to correct this situation?

A. Yes. If a handicapped child receiving special education needs supplementary services or aids to function effectively in the regular classroom, P.L. 94-142 requires that they be provided. The law clearly states that supplementary services, such as resource rooms or itinerant instruction, must be available in conjunction with regular class placement, whenever needed. It should be noted that these services, in order to be provided, must be listed on the child's IEP.

Q. If a child's placement is changed to a less restrictive environment, does this mean the child must remain in this placement situation even if discipline problems develop?

A. No. If the discipline problem cannot be overcome, federal regulations for P.L. 94-142 point out that when a child is so disruptive that the education of other

students is significantly impaired, the needs of the handicapped child cannot be met in that environment and the placement would therefore be inappropriate to his or her needs. Although this is mentioned in relation to regular classroom placement, it should apply to any less restrictive environment placement.

Q. Are there serious teacher liability questions raised by less restrictive environment placements

A. There could be and these should be examined carefully by teachers, paraprofessionals and the local federation. If, for example, you are required to dispense medicine, remove or replace braces, or lift children, find out what your liability is and what type of liability insurance you have through your school system or through other policies. Some states have laws giving teachers immunity from liability suits in relation to their work. Assurances should be obtained that this immunity covers these types of situations. Teachers whose local unions participate in AFT's liability insurance plan are covered up to $500,000 as long as they are carrying out duties required or assigned by the school system. No employee should ever attempt any of the above mentioned responsibilities or similar ones without authorization of the school system. Parents should also be required to sign a form permitting the school employee to carry out such non-educational tasks and releasing them from liability. Local federations might wish to establish such procedures contractually.

Q. Are there other liability questions the teacher should think about in protecting their students' safety?

A. Yes, teachers should insist that in the event of a fire or other emergency, all handicapped children in a class could be removed from the building as quickly and efficiently as any other child. Also, teachers should never be placed in the position of neglecting the safety of one child or group of children to meet the needs of another. Situations have arisen in which a teacher working without an aide has had to take a non-ambulatory child down the hall to the restroom, leaving the rest of the class unattended. In such cases, either an aide should be provided or the handicapped child's placement changed.

Q. As more handicapped children come into the public school system, will class sizes increase?

A. With the increased number of handicapped children in the schools and the many placement changes, some local school systems and state boards of education respond by raising class sizes. Because it took years to lower class size in many special education settings to the appropriate levels (often only 6, 8, 10 or 12 children) and because class sizes in regular classrooms have long been too high, teachers should do everything possible to prevent higher class sizes.

Q. How can class sizes be kept at levels which facilitate effective teaching and learning?

A. For those with collective bargaining, class size limits in different areas should be established in the contract. No more than two handicapped children with special education needs, for example, might be allowed to be placed in a regular classroom. A weighting system could be devised according to disabilities, whereby a handicapped child would be weighted more than a non-handicapped child in computing maximum class size in the regular classroom. Class sizes in self-contained special education classrooms should be maintained. Homebound instructors and resource room teachers likewise should not have the number of children they work with each day increased.

Recently, one AFT local not only convinced a state board of education to abandon its plan to increase class sizes in resource rooms and self-contained special education classrooms but persuaded the board to lower class sizes in several of these areas. It did so by presenting research evidence on the educational benefits of small class sizes and primarily by having special education teachers testify at several of the board's hearings on the necessity of being able to individualize instruction in special education. The lay person usually knows little about the complexities of special education. Both teachers working under a contract and those without collective bargaining should use every opportunity to inform the public and those who oversee education of problems and conditions unique to special education. Remember also that handicapped children by law must receive an appropriate education. Class sizes which prevent the child from receiving quality education therefore violate his or her rights.

Q. Does the requirement for less restrictive environment placements apply in non-academic areas?

A. Yes. Handicapped children are to have an equal opportunity to participate in non-academic and extracurricular services and activities. These include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs, and employment of students. Particular emphasis is given to physical education, which must be provided to each handicapped child in public education. Each handicapped child must be allowed to participate in the regular physical education program with non-handicapped children unless the child is enrolled full time in a separate facility or the child's IEP calls for a specially-designed physical education program. In P.L. 94-142 physical education is defined as

meaning the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports.)

Q. Will most handicapped children receiving special education be placed in regular physical education classes?

A. Placement should be based entirely on individual needs and capabilities. Teachers have questioned the appropriateness of some physical education placements. Learning disabled children, for example, who are accustomed to a class size of six are suddenly cast into a large physical education class and find themselves unable to cope with the situation.

Q. What is meant by "program options" required to be available to handicapped children?

A. Federal regulations require each public agency receiving P.L. 94-142 funds to take steps to insure that its handicapped students have available the variety of educational programs and services available to non-handicapped children served by the agency. This includes, but is not limited to, art, music, industrial arts, consumer and home-making education, and vocational education.

Q. Is it safe for handicapped children to be placed in vocational education classes?

A. In many cases, a child's disability will not affect his or her safety in the shop class. Yet, great concern has been expressed by many vocational education teachers who feel some handicapped children being assigned to their classes create very dangerous situations. In such cases teachers may want to insist that an aide be provided, that class size be appropriately lowered or that a very small special education vocational education class be established. Parents should be informed immediately if their child is placed in a potentially harmful environment. Depending on the circumstances, the child's placement in any vocational education class may be challenged or one of the above remedies sought. If these efforts fail, teachers should follow the procedures given previously for situations in which they feel a child is inappropriately placed.

Q. What should teachers or other education employees do if they don't feel qualified to work with a child placed in their charge?

A. In this situation the employee should discuss the matter first with the child's IEP planning team, particularly the school system representative and the child's parents. If a solution is not worked out with these parties, such as immediate inservice training and access to support personnel or a change in placement, follow the recourse given previously for teachers who do not feel that the IEP is appropriate or that it can be implemented under existing circumstances (p. 3).

Complaints can also be made to the monitoring agency of your state education department. It is responsible by law for seeing that teachers have the training necessary to carry out least restrictive environment requirements. It must also insure that ongoing inservice programs are available to all personnel engaged in the education of handicapped children. Such programs must include the use of incentives (e.g., released time, payment, academic credit, certification renewal or updating of professional skills), the involvement of local staff, and the use of effective innovative practices.

Q. Has AFT developed any guidelines for appropriate implementation of least restrictive environment placements?

A. Yes, the following guidelines should be considered in establishing placement of handicapped children requiring special education.

1. Not all handicapped children benefit from being placed in the "mainstream." So-called restrictive environments such as residential institutions, resource centers and self-contained special education classrooms in many cases offer the child developmental opportunities which would be impossible to achieve in a "less restrictive" setting.

2. Placement of handicapped children should be decided on an individual basis, based on the readiness of the special student and the preparedness of the receiving classroom to meet individual children's special needs.

3. Placement decisions should take into consideration a child's social and emotional developmental opportunities, as well as intellectual and physical development.

4. Teachers should be involved in placement decisions to assure acceptance of the exceptional child in the classroom and to evaluate the capability of the classroom to accommodate the individual child's special needs. Regular teachers would then be informed of special placements in their classes, which is not always the case now. Special education teachers also in many cases are not being involved in their students' placement decisions.

5. Transitional periods are often necessary to prepare both handicapped and non-handicapped students to adjust to new situations.

6. Staff development programs to prepare teachers to work with exceptional children in their classes must be available prior to such placements, and continuous support and training are necessary to meet problems as they arise. If is often overlooked that special education teachers specialize in certain areas and may require inservice training when assigned children with disabilities in which they have little or no expertise. Inservice training also is needed for paraprofessionals and other support personnel.

7. Class sizes must be kept low in special education

whether in a "restrictive" environment or the regular classroom to assure the necessary individualization of instruction.

8. Certified special education teachers must be retained to continue to meet the needs of children in special classes and to work with regular teachers in developing appropriate instructional programs for exceptional children.

9. Counselors, psychologists, psychiatrists, and other auxiliary personnel must be readily available to special and regular teachers.

10. Teachers should have regularly scheduled release time for consultations with support personnel.

11. Instructional materials, equipment, and facilities must be adapted to the needs of exceptional children in the regular classroom and throughout the school.

12. Scheduling of the educational program and buses should conform to the needs of exceptional children rather than vice-versa.

13. Safeguards should exist to see that funds designated for special education follow the child, even if in a less restrictive environment.

Q. How is grading to be handled when handicapped children are placed in less restrictive environments?

A. The same grading standards should apply to handicapped and non-handicapped alike. Cases have been brought to our attention in which, for example, an educable mentally retarded child placed in a regular classroom tries very hard but does not do what would normally be considered passing work. The teacher is faced with the dilemma of giving the child failing grades or inflating the grade in light of the supreme effort made by the child. Most choose the latter. However, if this situation does develop, the child most probably is inappropriately placed.

DUE PROCESS

Q. May teachers initiate the due process procedure established under P.L. 94-142?

A. No. As mentioned before, only the parent or the public agency may use the due process mechanism to challenge proposals or refusals to initiate or change the identification, evaluation or educational placement of a handicapped child or the provision of a free appropriate public education. If not supported in their concerns by parents or the school system, teachers must use other sections of the law and collective bargaining, as explained in this booklet, to protect their rights and the rights of the children they serve. The AFT is continuing its efforts to amend the law to allow teachers access to the due process mechanism so they too can act as child advocates.

Q. Do teachers have the right to their own counsel if called to testify at a due process hearing?

A. Teachers are allowed to have their own attorney present to advise them, but the attorney may not cross-examine witnesses, ask questions, raise objections or participate in the hearing in any way. Union representatives may not accompany the teacher at all. One AFT local made strong objections to HEW over these restrictions on teachers' right to counsel and representation. HEW, so far, has overruled the objections on the basis that this practice would violate the Buckley Amendment, which assures children's right to privacy. Denial of counsel to teachers in some cases has resulted in the hearing officer mandating that a teacher go back to school for courses, or perform chores or duties in violation of the collective bargaining agreement. Teachers have had to take additional courses on their own time and at their own expense. The AFT feels this is blatantly unfair and will continue to seek the right of teachers to counsel at due process hearings.

STATE AND LOCAL REGULATIONS

Q. Are there rules and regulations governing education of the handicapped other than those at the federal level?

A. Yes. There are state laws and directives, court orders and local regulations which may add additional requirements in educating the handicapped beyond those set forth in federal law. Teachers and other educational personnel should request information on these from their special education administrators. You are then not only aware of whether or not you are in compliance with law and regulations but also can ascertain which level of government to address to preserve good features and change bad ones.

Q. Can teachers affect the way P.L. 94-142 is actually implemented in the state?

A. This can be done in several ways. Your state education department must submit an annual plan for education of the handicapped to the U.S. Commissioner of Education in order to receive funds under P.L. 94-142. Prior to adopting the state plan, the state education department must make the proposed plan available to the public, hold public hearings which must be advertised in newspapers or other media, and provide the general public an opportunity to comment on the plan. AFT federations and education personnel should watch for these notices or contact the state education department to determine when public hearings will be held to insure input into the state plan. (Each local education system must submit an application to the state for P.L. 94-142 funds which includes specific information and procedures for its own implementation of the law. Teachers should be aware that the local school system is required to make this document available to the public and accept comments

on it but does not have to hold public hearings.)

Each state also is required under P.L. 94-142 to have a state advisory panel on the education of handicapped children. Included in its membership must be at least one teacher of the handicapped. Commentary in federal regulations for P.L. 94-142 points out that the state may expand the advisory panel beyond a representative of each of the groups specifically designated by law. As one example, it gives "broad representation within professional groups (e.g., (a) regular education personnel, (b) special educators, including teachers, teacher trainers and administrators . . . and (c) appropriate related services personnel." Appointments are made to the advisory panel by the governor or any other official authorized under state law to make such appointments. AFT locals should attempt to place representatives on this panel.

NON-COMPLIANCE

Q. What will happen if our school system or state is found to be out of compliance with P.L. 94-142?

A. If your local school system refuses to comply with the law, the state may withhold the school system's share of federal funds under P.L. 94-142 and possibly some state funds in accordance with provisions of state law on education of the handicapped. The state could also refuse future applications by the school system for P.L. 94-142 funds on the basis of noncompliance. P.L. 94-142 funds can be withheld only after the local education agency has been given reasonable notice and opportunity for a hearing.

In addition, the federal government may withhold funds for education of the handicapped from an entire state. This can be done only after reasonable notice and an opportunity for a hearing are provided. The U.S. Commissioner of Education is authorized to withhold all P.L. 94-142 funds, or portions of them, from a state or may require that funds be withheld from specified local education systems. Such action may be taken when the state or school systems for which it is responsible are failing to meet the requirements of the state's annual program plan or local applications for funds. Federal funds which may be withheld include those from P.L. 94-142 and from Sections 121, 305 and Title IV-C of the Elementary and Secondary Act of 1965 and Section 110(a) of the Vocational Education Act of 1963, which all provide assistance for the education of handicapped children.

Q. Could the state lose any other funds by failing to provide an appropriate education for handicapped children?

A. Yes, the state could have *all* federal education funds withheld if it will not comply with Section 504 of the Rehabilitation Act of 1973. This is the basic civil rights law for handicapped persons. It carries no funding of its own and necessitated P.L. 94-142 to provide basic grants to states. Sections applicable to preschool, elementary, and secondary education require school systems to:

- provide handicapped children with a "free appropriate education;"
- educate handicapped students with nonhandicapped students to the maximum extent appropriate;
- eliminate evaluation procedures which result in misclassification; and
- establish procedural safeguards to allow parents or guardians to express opinions on evaluation and placement of their children.

In addition, Section 504 deals with several subjects not covered in P.L. 94-142, such as barrier-free facilities and program accessibility; employment; postsecondary education; and health, welfare, and social services.

Q. What is the real likelihood of federal funds being cut off if states or school systems are not in compliance with P.L. 94-142 or Section 504?

A. Admittedly, this is an extreme measure which is rarely invoked. Instead, the state and school systems in violation, when put on notice of such withholding of funds, usually find some way to come into compliance with law. If adequate supplemental funds can be obtained at the state or local level, the crisis will be averted. However, in many states, education budgets at these levels are already strained to the breaking point.

The real danger lies in the possibility that, to reach full compliance, schools may be forced to cut back drastically on the regular education program. This then triggers a situation in which every attempt would be made to find "shortcuts" in both special and regular education. Consequently, the quality of education in both areas sinks to minimum levels. Public education would then, in reality, be failing all children. Inattention to sloppy implementation of P.L. 94-142 conceivably could generate as severe consequences for public education as educational vouchers.

Q. How can we prevent such a situation from occurring?

A. There is, in our opinion, only one course of action which will prevent the shortage of funds necessary for full implementation of P.L. 94-142 from ultimately creating disastrous consequences in the schools.

We have found that school administrators, caught in a vice between the need to comply with the law and the lack of dollars to do so, advise teachers to be patient about the placement of handicapped children in inappropriate learning environments or the lack of appropriate services to meet their needs. Compliance, they explain, simply cannot be achieved "overnight," at least not without significantly diminishing the regu-

lar education program. This attitude is extremely short-sighted because, under present fiscal conditions, the threatened consequence is inevitable anyway.

The AFT, along with other organizations, continues efforts to increase federal funds under P.L. 94-142. But to obtain the amount needed will mean greater persuasion of Congress of the need.

To accomplish this, school boards, administrators and teachers cooperatively must document both what they have been able to do to comply with the law and what they have been *unable* to do. This documented evidence must then be presented to Congress through their respective organizations. If the schools can prove they have inadequate funds to implement P.L. 94-142 fully without gutting the regular education program, Congress should provide additional funding or realize that changes will have to be made in the law. Hopefully its commitment to the education of handicapped children, and quality education in general, is great enough that federal appropriations for P.L. 94-142 will be sizeably increased.

Q. What would happen if areas of non-compliance were documented for the public, and Congress then failed to take any remedial action?

A. Given the public's present aversion to increasing state or local taxes and the high cost of compliance with P.L. 94-142, the quality of education for handicapped and non-handicapped alike would be seriously diminished. Under the present rate of funding, full compliance with P.L. 94-142 in many cases seems virtually impossible. This is true even if some funds are transferred from the regular education budget.

The overriding point here is that without additional federal monies, the consequences are likely to be the same no matter which course of action is taken. Many schools will either fail to comply fully with P.L. 94-142 or will have to rely on monies from the regular education budget to do so.

Again, there is one option which should prevent blame for the resultant chaos from falling to teachers and the public schools. If public education, *as an institution*, candidly admits it is not in a position to reach full compliance but is making every effort to do so, the responsibility should be shifted to Congress where it properly belongs. The alternative is to have the schools engage in a "cover-up" which may gain them a little time but which unquestionably will be discovered. In this event, public education would be subject to the full wrath of the public, the courts, and the media—and somewhat deservedly so. Law suits will ensue which will further deplete the school's scarce resources. The media will make its usual charge that public schools are failing to do their job, with little sympathy given to their financial plight. The level of the quality of education, regular or special, within public education will dramatically decline.

Q. If additional federal funds are not obtained and the schools have documented their failure to fully comply with P.L. 94-142, won't they be opening themselves up to law suits?

A. Yes, this is the inherent risk. Here again, however, the law suits would come eventually anyway. Exposure of a problem forces some type of action to be taken to correct the situation. If there is a whistle to be blown, it is better to blow it on yourself than wait for someone else to do it.

Q. What should be done if school boards and administrators refuse to cooperate in documenting shortcomings in complying with P.L. 94-142?

A. Unfortunately, this may be the case in some situations. If so, teachers and other school employees should assume the responsibility themselves. This is best done by establishing a monitoring committee within your local union. Contact the AFT Educational Issues Department in Washington, D.C. for assistance, if needed.

Q. Where can we obtain assistance in dealing with these and other problems related to P.L. 94-142?

A. Requests for information and assistance should be taken to your local and state federations. You are also encouraged to contact Marilyn Rauth, Director, Department of Educational Issues, American Federation of Teachers, 11 Dupont Circle, Washington, D.C. 20036. Additional support in protecting children's rights may be generated among local advocacy groups for handicapped persons, the PTA and similar organizations.

Q. There have been many problems associated with implementation of P.L. 94-142. Should educators be opposed to this law?

A. Educators certainly would find themselves in agreement with the intent of the law, namely, that all handicapped children have a right to a free appropriate public education. In addition, many provisions of P.L. 94-142 have long been needed and will help achieve this goal. Our responsibility as professionals is first, to point out specific mandates of the law and problems of implementation which in actual practice diminish the quality of education a child receives and secondly, to see that such provisions or practices are changed. It is up to each individual working with handicapped children to inform parents, school system officials, AFT, and government representatives of requirements of P.L. 94-142 which benefit handicapped children and of those which prove harmful to them. Make sure your local union is involved. If you are having any of the problems addressed in this booklet or others we may have overlooked, take time to write AFT and your Congressional representatives.